



# City of Carmel

## Carmel Advisory Board of Zoning Appeals

Monday, May 24, 2004

### Minutes

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 7:00 PM on Monday, May 24, 2004 in the Council Chambers of City Hall, Carmel, Indiana. The meeting opened with the Pledge of Allegiance.

Members in attendance were Leo Dierckman; Jim Hawkins; Earlene Plavchak; Madeleine Torres; Chuck Weinkauff, thereby establishing a quorum.

The Department of Community Services was represented by Angie Butler. John Molitor, Legal Counsel was also in attendance.

The minutes of the April 26, 2004 meeting were approved as submitted.

John Molitor reported that a request had been received from Philip Thrasher who represents several opponents of the Special Use petition filed by Martin Marietta Materials. The request is not to hear this item this evening, and it has not been included in the Agenda. The Department will Docket the Special Use petition for sand and gravel operation on the Mueller south property by Martin Marietta for the regular meeting in June. At that time, the Board may want to set a date for a special meeting if need be.

#### **H. Public Hearing.**

##### **1-4h. Carmel Hope Fellowship Church - Special Use**

The applicant seeks special use approval for a church.

**Docket No. 04030014 SU** Ch.7.02.A special uses

The applicant also seeks the following development standards variances:

**Docket No. 04040028 V** Chapter 7.04.03.A front yard setback

**Docket No. 04040029 V** Chapter 26.02.08 side yard for church

**Docket No. 04040030 V** Chapter 7.04.03.F lot coverage

The site is located at the southeast corner of 146th Street and Carey Road.

The site is zoned R-1/Residence.

Filed by Don Hawley of Carmel Hope Fellowship.

Don Hawley of Carmel Hope Fellowship, 14535 Carey Road, Carmel appeared before the Board representing the applicant. Dave Barnes of Weihe Engineers, 10505 North College Avenue was also present.

The property located at the southeast corner of 146<sup>th</sup> Street and Carey Road is owned by the Indiana Association of Seventh Day Adventists who are desirous of establishing a church on this property. The church would be constructed in three phases: remodel of the existing house to include a chapel and parking for the building. Phase II consists of the completion of the entire parking lot—the petitioner is asking for an 18-month time frame.) If desired by the neighbor to the south of the property who was concerned about privacy, the petitioner is willing to erect a privacy fence after the completion of the parking lot. Phase III is final design and building of the new church structure.

In addition to the Special Use, the petitioner seeks relief from the variances listed. A reduction in the front yard setback is being requested on both 146<sup>th</sup> Street and Carey Road, due to the increased dedication of right-of-way requested by Hamilton County. The church could not be built on this property without this variance. The setbacks from the new right-of-way are 35 feet; the petitioner is requesting a 5-foot setback on the north side, and a 33-foot setback on the west side (Carey Road.) A reduction of setback along the east side of the proposed parking lot is also requested. This area adjoins a common area and a retention pond in Taylor Trace; this variance is needed to provide the required number of parking spaces for a facility with the 200 person seating capacity. A variance for lot coverage is also being requested in order to accommodate the building and parking lot. For this purpose, the services of Weihe Engineers to research and prepare the necessary documents and plans to accomplish this project, including the use of the Taylor Trace retention pond for storm water runoff. There will be some slight modifications to the south berm.

The petitioner has been in contact with the developers of Taylor Trace and they have no objections to the shared use of the retention pond. Mr. Hawley submitted a letter from Marvin Taylor, president of Springmill Builders, developer of Taylor Trace. Mr. Taylor is a current resident of Taylor Trace and supports the church project.

Drawings of the proposed renovation for the existing house were displayed on the overhead. The house will be incorporated into the new church building when it is completed; the garage will be retained as a youth chapel.

The resident to the south, Tony Trent, has expressed concern regarding privacy. The petitioner has agreed to install a privacy fence at the time the parking lot is completed.

Mr. Hawley was not able to show samples of the brick at this time—they would be available in two days. However, Mr. Hawley did display an Owens Corning Oakridge shingles that will be used—a 40-year architectural shingle, in a quarry gray color.

Members of the public were invited to speak in favor of the petitions; the following appeared.

**Mary Wade**, 3309 East 146<sup>th</sup> Street, immediately to the east of the site, expressed support for the church. Mrs. Wade did express concern regarding privacy, and would like a privacy fence or some type of buffer between her property and the church site.

Members of the public were invited to speak in opposition to any or all of these petitions; the following appeared:

**Tony Trent**, 14445 Carey Road, agreed with Mr. Hawley's comments regarding churches—they are

important in society. Mr. Trent expressed some concern with the use of the property—the size of the property versus the proposed use. 88% of the total site will be covered with impervious product and that is a concern. Also, greenspace is a concern as well as the fact that four variances need to be utilized to accommodate the property. The proposed facility may also have a negative, economic effect on Mr. Trent's property. There is also a concern with lighting on the Church site that may shine into his property. Finally, who protects Mr. Trent's property if variances are continually needed to use property? Mr. Trent's property is not in a subdivision—who protects his property?

**Jeanne Bebee**, 3405 East 146<sup>th</sup> Street, echoed those concerns expressed by Mr. Trent regarding not being represented by any homeowners association. Mr. Trent's property, Ms. Bebee's property, and James Traynor's property to the east are all alone, not part of a subdivision, and they must rely upon the Board to represent them in a fair and equitable manner. This is just another instance of the purchase of a piece of property in Carmel with the assumption that a use variance would be automatically granted. Ms. Bebee respectfully requested that this petition be denied and that this parcel would be maintained as a residential area of single-family dwelling homes.

Rebuttal, Mr. Hawley. Regarding the concerns expressed by Mrs. Wade and her request for privacy, the petitioner has met with Mrs. Wade, the drawings have been modified and the petitioner assured the Board and Mrs. Wade that a buffer for maximum privacy will be established. Also, the coverage of the lot is at 39% of the site, the maximum is 35%; therefore, the petitioner is seeking a variance for the 4%. The lot is too large for one residence and too small to be anything real large. Therefore, the petitioner is requesting a 200 seat Church facility only and that would be forever controlled by the size of the lot and the parking, etc. Regarding the other residents' concerns that the site remain single family residential, with the value of the property, it is not practical that someone would pay over \$200,000 to purchase a 1400 square-foot home. Mr. Hawley suggested that if the Special Use is not granted, other applicants would likely request something like a Village Pantry, etc., that does not fit with the neighborhood.

Department Comments, Angie Butler. The Technical Advisory Committee has reviewed this proposal twice and the petitioner has satisfied all of their requests. The petitioner has also satisfied the requests of the Urban Forester to provide the buffer yard requirements. The Department recommends positive consideration with the following conditions: 1) The applicant will install sidewalks or a path along Carey Road. 2) The applicant is to dedicate right-of-way pursuant to approval of the County Highway and the City of Carmel.

Leo Dierckman questioned only 52 parking spaces for a 200-seat church facility.

Mr. Hawley responded the 52 parking spaces allow one vehicle per 4 seats. It is possible that 2 of the parking spaces may be lost because of the trees. The petitioner is working with the Urban Forester to save the maximum number of trees.

The public hearing was then closed on the Carmel Hope Fellowship Church – Special Use.

Leo Dierckman moved for approval of the Carmel Hope Fellowship Church, seconded by Madeleine Torres.

The recommendations of the Department were not included in the motion. Therefore, Ms. Torres withdrew her second, Mr. Dierckman withdrew his motion.

Leo Dierckman then made formal motion to approve **Docket No. 04030014 SU, Carmel Hope Fellowship Church, Special Use, conditioned upon** the following: a) Installation of a sidewalk or path along Carey Road; b) Dedication of right-of-way pursuant to Hamilton County Highway and/or the City of Carmel; and c) Amending the plans to meet the minimum buffer yard planting requirements; seconded by Jim Hawkins and **APPROVED** 4 in favor, 1 opposed (Leo Dierckman.)

Earlene Plavchak moved for approval of **Docket Nos. 04040028V and 04040029 V**, front yard setback and side yard for church, seconded by Jim Hawkins and **APPROVED** 5-0.

Leo Dierckman moved for approval of **Docket No. 04040030 V**, lot coverage, seconded by Jim Hawkins and **APPROVED** 5-0.

**5h. Cherry Creek Estates, Sec 1B, CA #3 - Amenity Area- Special Use**

The applicant seeks special use approval for an amenity area.

**Docket No. 04040003 SU** Chapter 5.02 special uses

The site is located at southeast corner Hazel Dell Pkwy and Cherry Tree Rd.

The site is zoned S-1/Residence- Low Density.

Filed by Bill Bryant of Stoeppelwerth & Associates, Inc.

Paul Rioux of Platinum Properties appeared before the Board representing the applicant, developer of Cherry Creek Estates. During the original platting process of Cherry Creek Estates, an amenity area was to be included with a pool, bathhouse, playground, basketball and tennis courts, walking trails and adequate parking.

The applicant has been through TAC Committee review and their comments have been addressed. The pool follows the requirements of the City of Carmel, lifeguards will be provided and the area in its entirety will be owned and managed by the homeowners association that has already been established.

The Cherry Creek Estates community is approximately 10% completed and has 50 homes under construction out of approximately 275. The tennis courts and basketball court will not be lighted for night use.

Members of the public were invited to speak in favor of or opposition to this petition; no one appeared and the public hearing was closed.

Department Comments, Angie Butler. As of May 21<sup>st</sup>, the Department received a letter from Bill Bryan of Stoeppelwerth—the requirements of the pool size have been fulfilled and a commitment is being made regarding the lifeguards.

When questioned, Paul Rioux said the main pool has a surface area of 2,000 square feet, plus a kiddie pool.

Chuck Weinkauff was hoping the dimensions would be 75 feet X a minimum of 32 feet.

Mr. Rioux explained that the pool is “L” shaped, 45 feet X 54 feet, the outside dimension, and 35 feet X 24 feet at the “L”.

Chuck Weinkauff commented that a great number of subdivisions built in the 1970's included pools that are 75 feet in length—25 yards—and is a swimming size for competitive swimming, and a minimum of 32 feet wide that provides four lanes for competition. Carmel High School has a tremendous swimming program and the foundation for that program has been neighborhood pools associated with neighborhood swim teams.

Mr. Rioux said the pool was obviously not designed as a competitive swimming pool—dimensions and depths have a lot to do with that. Most of the families are interested in the “L” shape with stairs and a lot of shallow areas for the children. The kiddie pool is only 18 inches deep. This community consists of approximately 273 homes and over 100 of them are empty-nester ranches. The pool is modest by the standpoint of the size of the community. This will be the fourth pool Platinum Properties has built in a community such as this and it seems to be very popular and has a lot of deck space and a lot of family activity as opposed to a competitive pool.

Madeleine Torres commented that just because there are not families in the empty nesters does not mean that there are not people who want to do lap swimming. Perhaps the layout could be changed slightly to accommodate a 75 X 32-foot pool.

Mr. Rioux explained that he was actually representing Pulte, the builder of this community, and this is the third neighborhood in a row that has requested a pool of this size—the other two were approved.

Earlene Plavchak commented that the pool size is great for the small babies; the 4-6 year olds like to be at the shallow end of the steps. When the kids get older, if the pool is not big enough to accommodate them, they will not want to “hang out” there. The pool should be a congregation place for the children and if it is just a glorified wading pool, the older kids will not go there and it defeats the purpose of having a pool.

Leo Dierckman moved for approval of **Docket No. 04040003 SU, Cherry Creek Estates, Section 1B, CA #3, Amenity Area, Special Use**, seconded by Earlene Plavchak, **APPROVED** 4 in favor, one opposed (Weinkauff.)

**6h. Carmel Science and Technology Park, Blk 11, lot 4: Companion Animal Hospital**

The applicant seeks use variance approval for a veterinary hospital.

**Docket No. 04040018 UV** Chapter 20D.01 permitted uses

The site is located just southwest of the intersection of Carmel Dr and Guilford Ave.

The site is zoned M-3/Manufacturing Park District.

Filed by Mark Monroe of Drewry, Simmons, Pitts & Vornehm for REI Investments.

Mark Monroe, attorney, 8888 Keystone Crossing appeared before the Board representing Dr. Anthony Bizetti, owner of Companion Animal Hospital, and REI Investments, owner of block 11 in the Carmel Science and Technology Park. Dr. Bizetti was in attendance as well as Sean Curran, Curran Architects the project architect.

The site is located southwest of the intersection of Carmel Drive and Guilford Avenue within the Carmel Science and Technology Park. The entire site comprises approximately 8 acres, excluding the pond; the facility will be situated on approximately 3 acres. Lenox Trace Condominiums is located to the south of the site; to the east is Carmel Corporate Center. Lakeside Corporate Center Offices is to

the northeast, to the north is Midwest ISO, and to the west is the One Call Communications, all located within the M-3 Zoning District as well as the three acre site proposed for the animal facility.

The site plan has been designed in accordance with the M-3 Manufacturing District requirements. The facility will contain a 13,000 square foot office building that will house Dr. Bizetti's veterinarian medicine practice and will include parking located to the north and west of the building. The site also includes an extensive landscape plan containing 134 trees and 166 shrubs. There is a fenced area behind the building to the south—this area is intended for medical observation of animals only. The fence is an 8-foot cedar fence on the south as well as an 8-foot stone and wrought-iron fence to the east and west.

Proposed commitments have been filed with the BZA attorney and the Department of Community Services. Those commitments have been reviewed and approved by DOCS. In summary, those commitments state that the fenced area will only be used for medical observation of animals and not be used for "dog runs or animal runs." Any animal within the medical observation area will be on a leash and accompanied by one of Dr. Bizetti's employees; no more than 5 animals at any one time will be in the medical observation area. Regarding noise impact, further commitments provide that any dog within the observation that may bark would be soft-muzzled and there would be no noise impact to any adjacent property owner. The veterinarian facility would only board animals for medical observation purposes—the facility is not meant to be a commercial kennel in a traditional sense and will only be used for overnight stays for animals that need medical observation. Those commitments are a part of the record this evening.

The lighting plan indicates no light spillage beyond the fenced area to the south. Any light that would emit specifically from the parking lot lighting would transmit no farther than the fence. The fence is located 65 feet from the Lenox Trace property line and the building is situated 140 feet from the property line.

The building elevations were reviewed. The north and east elevations provide for an extensive design of cut stone, cedar shake, and green-tinted glass at the entry and other windows along the front and sides. The rear and west design of the building includes more of the cut-stone and cedar shake. A masonry wall design has also been included on the rear.

Dr. Gary Sampson, an expert in animal behavior with over 40 years experience, has prepared a letter of findings; Dr. Bizetti summarized Dr. Sampson's findings as follows.

Dr. Tony Bizetti, 180 East Carmel Drive, Carmel, owner of Companion Animal Hospital, addressed the Board and summarized the concerns of odor and noise control from neighbors in the adjacent area. The issue of odor control is handled by twice a day policing of the area for any animal waste in order to maintain the highest order of cleanliness that is vital to the care of the animals. Regarding noise, Dr. Sampson mentions three reasons that dogs will bark. One is an effort to communicate with family members; two is line of sight of an animal outside the containment area; third is identification and protection of home territory. The dogs are removed from family members; the fencing plus landscaping plus buffer alleviates dogs in line-of-sight—dogs would be outside the containment area; and dogs would not be in their home territory and therefore would not bark to protect home territory.

Dr. Bizetti summarized by saying that the concerns of noise pollution are valid in any neighborhood situation and in order to establish a good relationship with the neighborhood, the noise and odor must be managed appropriately. Dr. Sampson feels that the policies and design of the facility through fencing and landscaping will help negate those issues. In a situation where there is a neurotic barker, the animal will be soft-muzzled.

Mark Monroe stated that the issues raised by members of the Technical Advisory Committee have been addressed.

Members of the public were invited to speak in favor of this petition; no one appeared. Members of the public were invited to speak in opposition to this petition; the following appeared:

**Roberta Ross**, attorney representing Lenox Trace Condominiums presented a petition with 120 signatures in opposition to this request. The residents of Lenox Trace has 160 homes, generally elder persons chose this location specifically away from the hub-bub and noise of a busy city; nearby is a retention pond used for recreational purposes—fishing and walking. The residents are concerned that this proposed facility would introduce into their environment exactly what they chose to move away from. Across from Lenox Trace is a new condominium that will be constructed and marketed at \$250,000—public notice was not received by the new condominium owner—notice would have gone to the owner who sold the ground and he would not have had concerns of a potential owner. This will be the largest veterinarian clinic in the State of Indiana and will have 60 inside kennels. In order to accommodate 60 animals in recovery, there must be additional funds available. Once a structure is built that accommodates 60 animals, and they are kept overnight, who will police whether they are being kenneled overnight or if they are there for medical observation? The timeliness of removal of animal waste is different that was represented to the homeowners of Lenox Trace. Additionally, the bottom row along the back of the facility is windows for dogs to look out. If the animals are injured or recovering from operational procedures, they do not need this kind of lookout. If, however, the dogs are being boarded and will sit by the hour, like doggie-day-care, the dogs will be bored and want to look out, something to amuse itself. There is a reason M-3 District does not allow veterinary. Ms. Ross read the definition of the M-3 district and the exclusion of permitted uses, including a veterinary clinic, without approval of the BZA. Ms. Ross stated that no one could predict, with any reasonable certainty, what any dog will do under any circumstance. There is no representation why the largest veterinarian facility in the State must be in this particular location, backing up to these residences. It is likely that the clinic hours of operations will be expanded at some future date. Ms. Ross asked the Board to consider that the expert, Dr. Sampson, who rendered his opinion regarding the behavior of the dogs, not only used to work for Companion Animal Hospital in Indianapolis, but has never been a regular treating physician. Dr. Sampson taught at the University of Minnesota and worked for Eli Lilly & Co. for 30 years with animals in laboratories in boxes and not someone who has day-to-day experience with animals at vet clinics. The residents of Lenox Trace request that this petition be denied.

**Sylvia Peters**, resident of Lenox Trace and president of the Lenox Trace HOA, had some serious concerns. If these animals are all sick, and 60 per day—what about hazard waste disposal, and will there be a night veterinarian on the premises? Sick dogs, 5 at a time out on leashes—will they be contagious or communicable to one another? Muzzle a sick dog that is only there because he is sick? Does this really sound like a medical clinic or is this another term for boarding animals? Ms. Peters asked the Board to deny this petition.

**Kevin Quinlan**, 11760 Glenbrook Court, Lenox Trace, has been in residence at Lenox Trace for 11 years. Mr. Quinlan said he and the other residents who signed the petition against the facility are concerned with noise, smell, waste, and disease that will accompany 60 dogs a day to the site. There are other business in this area that do not alter the character or value of the neighborhood; this proposal will have a severe, adverse effect not only on Lenox Trace but the three, proposed up-scale projects planned for the immediate Guilford area. Mr. Quinlan said he had spoken to another veterinarian who stated “overnight medical observation” is a term animal hospitals use to skirt zoning laws. Companion currently boards dogs and will continue to do so, only under a new definition. Lenox Trace By-Laws allow for pets, but there is a strict limit on size, number and noise. The wrought-iron fence will not block line-of-sight and the Lenox Trace pool is directly behind. The intersection of Carmel Drive and Guilford will have walkers and joggers, foot traffic from the adjacent office buildings that will also trigger the barking. Mr. Quinlan asked the Board to deny this petition.

**Sally Vogel**, 11755 Beckham Court, Lenox Trace, has lived there for 11 years, said the area wildlife and beauty will disappear if the animal hospital is allowed. The residents will be left with ill, vomiting, sometimes dying, whining, howling, urinating, continuously barking dogs that will cover a portion of the grassy knolls of Carmel Technology Park with excrement consisting of worms and parasites. This site is not appropriate for this particular facility!

**Florian Walter**, Lenox Trace resident, stated the proposed facility does not conform to the current zoning and is not a permitted use. 35 to 60 barking dogs on the property line would be an unwelcome noise—no one can guarantee that the dogs would not bark, and Mr. Walter is opposed. Mr. Walter asked that the Board deny this petition.

**Reisa Utterback**, 11755 Beckham Court, #205 Lenox Trace, said her balcony would look directly into this facility/fenced-in area. Please consider the second stories of Lenox Trace and deny this petition.

Rebuttal: Mark Monroe presented a photograph of the view from the site south towards Lenox Trace taken last weekend. This view would not be altered in any way—the trees would be left as is, and in addition, an 8-foot cedar fence and another row of trees would be installed. An aerial photograph was shown displaying the surrounding area and the Carmel Science and Technology Park. The Park is zoned M-3 Manufacturing and permits by right light manufacturing uses, retail uses, storage and warehouse uses, as well as professional office uses. Those uses have been allowed since 1982 when the property was rezoned to M-3. Lenox Trace is zoned B-5/commercial. When Lenox Trace was constructed at this location, they were made aware of the M-3/Manufacturing zone that existed next door. In reality, today, there could be a small factory placed on this 3-acre site or even the remaining 5 acres. The proposed use is low impact when compared to a factory, warehouse, or retail, and within the M-3 zone, professional office uses are allowed. In this case, Dr. Bizetti is a member of a recognized profession and licensed by the State as a veterinarian. Through a technicality in the Carmel Ordinances, his profession is not listed in the professional office use. Otherwise, anywhere else, Dr. Bizetti’s profession is recognized and would be permitted in a district that would allow professional office use.

The outdoor use of the medical observation area is only used and committed to as a medical observation area and no more than 5 leashed animals will be in the area at any one time. Expert testimony from Dr. Sampson states the animals will not bark in the situation outside the medical observation area. As a precaution, if they do bark, an employee will place a soft muzzle on them. Dr.



Bizetti has been operating for the past 13 years at 180 East Carmel Drive within the Hunters Run Shopping Center, and over that period of time, Dr. Bizetti has had no complaints regarding barking or any nuisance factors related to animals. Mr. Monroe offered a letter from Fineberg & Assoc., Dr. Bizetti's current landlord, who said they had not received any complaints in the last 10 years regarding barking dogs or other noises being heard outside the building. Other business owners adjacent to Dr. Bizetti's current facility have stated that the facility has not caused any noise nuisance and they are in support of Dr. Bizetti's current location.

The spacing for landscaping and suitable fencing as well as a quality designed office building will definitely raise the architectural standards within the Carmel Science & Technology Park.

Department Comments, Angie Butler. Provided the applicant can present a site layout addressing any negative impacts associated with the outdoor area, the Department is recommending positive consideration of this Docket.

Leo Dierckman asked Mark Monroe to go over the commitments again. Mr. Monroe did so, and also provided copies to the Board.

Leo Dierckman was concerned that the commitments tendered are not enforceable; there is not enough staff to police and enforce.

Other comments and discussion from the Board included the noise factor, the medical observation boarding kennel, and the surrounding area. There are several businesses/offices that were courted to locate in this area. The proposed use brings a lot of concerns and 60 dogs is a situation that really needs some serious consideration as well as the need to try to enforce the commitments submitted.

Mike Hollibaugh addressed the Board stating that the commitments are enforceable. The Department has the ability to enforce the commitments and has legal support in the way of fines, etc. and can be effective in policing and enforcing.

Roberta Ross expressed concern that there was a misrepresentation by the petitioner. The current Companion Animal Hospital landlord went to extraordinary, expensive measures to insulate against the noise or certain tenants threatened to break their lease and move. Now it is said that the landlord has never had any problems, no one is unhappy, etc. This proposed use was not accidentally left off the list of permitted uses in this zone—a veterinary clinic without kennels is NOT a permitted use, meaning you have to go outside the rules to use the property for this purpose.

Re-Rebuttal: Mark Monroe said the information was furnished in response to questions regarding care and operation of Dr. Bizetti's facility as well as his reputation. The biggest issue here seems to be the use of the outdoor area. Again, the only proposed use for the area is the walking/exercising of the animals on a leash and if they make noise, they will be muzzled. Otherwise, this is an indoor use for a professional office for Dr. Bizetti and his associate Drs.

Mike Hollibaugh addressed the Board stating that the commitments are enforceable. The Department has the ability to enforce the commitments and has legal support in the way of fines, etc., and can be effective in policing and enforcing.

Chuck Weinkauff asked Sylvia Peters if the retention pond is a part of the Lenox Trace property. Ms. Peters responded in the negative.

Earlene Plavchak asked if the smaller outside area could have a brick wall surrounding, such as a courtyard, or could the footprint of the building be moved so that the parking lot could buffer the outside area. Also, the line of trees would have to be mature evergreen to visually screen all year long.

Chuck Weinkauff commented that cars would make more noise than the dogs.

In response to questions from Leo Dierckman, Mark Monroe said that currently, Companion Animal Hospital has a staff of 20 persons.

There was some discussion regarding a \$500 /day fine if commitments were not kept, and perhaps fines could be payable to the Parks Department, no judges/court involved. John Molitor commented this would be highly irregular and difficult to enforce—fines levied must be some sort of Court process before a penalty could be assessed.

The public hearing was then closed.

Leo Dierckman moved for approval of **Docket No. 04040018 UV, Carmel Science & Technology Park, Block 11, Lot 4, Companion Animal Hospital**, seconded by Madeleine Torres; the vote taken was 2 in favor, 3 opposed (Dierckman, Plavchak, Hawkins) **MOTION DENIED**.

**7h. TABLED: ~~Orin Jessup Land Co, Sec 2, pt lots 238-241 – Matthews Auto Repair~~**

~~The applicant seeks the following development standards variances:~~

~~**Docket No. 04040049 V** — Chapter 23E — Home Place Overlay Requirements~~

~~The site is located at 725 E 106th Street.~~

~~The site is zoned B-2/Business within the Home Place Business District Overlay.~~

~~Filed by E. Davis Coots of Coots, Henke & Wheeler for Matthews Auto Repair.~~

**I. Old Business.**

**1i. Northwood Hills, Sec 1, Lot 6 – Easton Residence – Special Use**

Petitioner seeks a time extension approval for a Special Use to continue as a commercial kennel use originally approved with conditions for a period of 18 months on May 22, 2000, as Docket No. **SU-19-00**. The site is located at 6320 Northwood Drive. The site is zoned S-1/Residence – Low Density.

Filed by Gerald & Evelyn Easton.

Jerry Easton, 6320 Northwood Drive, Carmel appeared before the Board requesting an extension for a Special Use that would allow the continued use of his residence as a commercial kennel originally approved for a period of 18 months on May 22, 2000.

Mr. Easton stated he currently has 7 dogs: two that are eight years old; one ten-years old; one that is 14 years old; two 15 year olds, and one that is 12 years old—one 14 year-old died 30 days ago. Mr. Easton asked to be allowed to keep the dogs until they die a natural death. Because of their age and the fact that some of them have medical problems, these dogs would not be considered for adoption.

Mr. Easton objected to the classification of his situation as a commercial kennel, since he and his wife do not sell dogs, and they do not raise dogs to sell. The Eastons have taken in stray and mis-treated dogs and have cared for them.

John Molitor advised Mr. Weinkauff that although this is not a public hearing, the Board could ask for public comments this evening. This particular use has been out of compliance with the Board's order for close to ten months now.

Mr. Weinkauff asked if there were any members of the public in attendance that would like to speak; no one appeared.

Department Comments, Jon Dobosiewicz. A letter was received from the public and forwarded to Board members.

Mr. Weinkauff confirmed that the letter was received. Mr. Weinkauff asked if the Eastons had taken on any new animals.

Mike Hollibaugh responded that the Department has made periodic visits to the property and evaluated the situation. The Department found that the Eastons have made adaptations and allow minimal numbers of dogs outside at any one time. There is currently no large record of complaints from neighbors.

Mr. Weinkauff recommended that the Board allow the Easton's request.

Leo Dierckman moved to extend the Provisions of May 22, 2000 that were part of Docket No. SU-19-00 and due to expire July 28, 2003 to July 28, 2006. The motion was seconded by Earlene Plavchak and APPROVED 5-0.

Mr. Weinkauff commented the Department would be tracking this item and would be asking Mr. Easton to appear again prior to the expiration date of the provisions specified.

### **Open Discussion Ensued**

John Molitor reiterated that the Martin Marietta matter would be on the Board's Agenda for June. The Department has discussed the possibility of setting a special meeting date, perhaps two weeks after the June meeting, so that if the petition needs to be continued, a meeting date would already be established and members would be available in July. It is likely that this meeting would take more than one hour

of the Board's time. The Board may ask the petitioner and remonstrators for additional information to be submitted.

Leo Dierckman asked if the Department could present how the process works as far as violations and fines, and how long it would take to go through the process. Perhaps the Board could explore a way to short-circuit the process. There are those who go through the process and are granted exceptions, but there are those who just blatantly violate the process. Is there enough "teeth" for the Department to effectively do its job?

Mike Hollibaugh responded that the Department is working with the City Attorney on a ticketing system that will allow compression of the timeline on some of the enforcement and fine-related issues.

Jon Dobosiewicz commented that the Department does not scour the community for violations, unless it is a public health, safety and welfare issue—we don't "head-hunt." The Department responds to called-in complaints or e-mails. Regarding the issue of commitments, it is better to have definitive commitments so that the time-line is specified and can be enforced at the end of the term.

Mr. Weinkauff referred to the issue of cell towers a few years ago---everyone has cell phones and no one wants towers. This evening, it was animal clinics. Everyone wants pets, but no one wants an animal hospital in their area until their pet is sick. Where can we put veterinary hospitals? It is something for us to think about.

Leo Dierckman responded that there are locations that are totally appropriate for pet hospitals, but declined to debate the vote this evening. We must remember what we are trying to develop and make it friendly for businesses to locate in Carmel and stay in Carmel.

**J. New Business.**

None

The meeting adjourned at 9:40 PM.

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Charles Weinkauff, President

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Ramona Hancock, Secretary Pro Tem